

§ 10.60

shall be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D.* The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Subpart D—Rules Applicable to Disciplinary Proceedings

SOURCE: T.D. 9011, 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.60 Institution of proceeding.

(a) Whenever the Director of the Office of Professional Responsibility determines that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of the Office of Professional Responsibility may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for a sanction described in § 10.50. A proceeding is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(b) Whenever the Director of the Office of Professional Responsibility is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of the Office of Professional Responsibility may reprimand the appraiser or, in accordance with § 10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(c) Except as provided in § 10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been

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accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9011, 67 FR 48765, July 26, 2002, as amended by T.D. 9359, 72 FR 54544, 54551, Sept. 26, 2007]

EFFECTIVE DATE NOTE: At 76 FR 32309, June 3, 2011, § 10.60 was amended by revising paragraphs (a), (b), and (d), effective Aug. 2, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 10.60 Institution of proceeding.

(a) Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the practitioner may be reprimanded in accordance with § 10.62, or subject to a proceeding for sanctions described in § 10.50.

(b) Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded in accordance with § 10.62 or subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

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(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.61 Conferences.

(a) *In general.* The Director of the Office of Professional Responsibility may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Voluntary sanction—(1) In general.* In lieu of a proceeding being instituted

or continued under § 10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under § 10.50.

(2) *Discretion; acceptance or declination.* The Director of the Office of Professional Responsibility may, in his or her discretion, accept or decline the offer described in paragraph (b)(1) of this section. In any declination, the Director of the Office of Professional Responsibility may state that he or she would accept the offer described in paragraph (b)(1) of this section if it contained different terms. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9359, 72 FR 54551, Sept. 26, 2007]

EFFECTIVE DATE NOTE: At 76 FR 32309, June 3, 2011, § 10.61 was amended by revising paragraphs (a), (b)(2), and (c), effective Aug. 2, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 10.61 Conferences.

(a) *In general.* The Commissioner, or delegate, may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) * * *

(2) *Discretion; acceptance or declination.* The Commissioner, or delegate, may accept or decline the offer described in paragraph (b)(1) of this section. When the decision is to decline the offer, the written notice of declination may state that the offer described in paragraph (b)(1) of this section would be accepted if it contained different terms. The Commissioner, or delegate, has the discretion to accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of the Office of Professional Responsibility or a person representing the Director of the Office of Professional Responsibility under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction.* The complaint must specify the sanction sought by the Director of the Office of Professional Responsibility against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The Director of the Office of Professional Responsibility must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of the Office of Professional Responsibility to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective/applicability date.* This section is applicable to complaints brought on or after September 26, 2007.

[T.D. 9359, 72 FR 54551, Sept. 26, 2007]

EFFECTIVE DATE NOTE: At 76 FR 32309, June 3, 2011, § 10.62 was revised, effective Aug. 2, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the Internal Revenue Service under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.